

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

ANTHONY LAWRENCE BARRA,
Plaintiff,
v.
WILSON, ZIEGLER, and SCOTTI,
Defendants.

Case No. 1:24-cv-00069-HBK (PC)

ORDER DISCHARGING ORDER TO SHOW
CAUSE

(Doc. No. 7)

ORDER DIRECTING CLERK TO DOCKET
PLAINTIFF'S FIRST AMENDED
COMPLAINT

(Doc. No. 8 at 2-4).

Currently before the Court is Plaintiff's response, filed February 26, 2024 to the Court's February 8, 2024 order to show cause why Plaintiff's Complaint should not be dismissed for failure to exhaust administrative remedies. (Doc. No. 8). In his response, Plaintiff states, *inter alia*, that, "due to extenuating circumstances and illegal search and seizures . . . I am missing several of my step C responses [sic] which in regards to this case is the point of issue." (*Id.* at 1). Liberally construed, Plaintiff appears to contend that the grievance process was unavailable to him. Plaintiff also attaches a proposed first amended complaint to his response. (*Id.* at 2-4).

Considering Plaintiff's averments, the Court will discharge the order to show cause.¹ The

¹ The Court's discharge of the order to show cause should not be implied as a ruling on the exhaustion issue. A prisoner need not plead or prove exhaustion. Instead, it is an affirmative defense that must be proved by defendant. *Jones v. Bock*, 549 U.S. 199, 211 (2007). A prison's internal grievance process, not the PLRA, determines whether the grievance satisfies the PLRA exhaustion requirement. *Id.* at 218.

1 Court will direct the Clerk of Court to file the proposed first amended complaint ("FAC"), which
2 the Court deems the operative complaint in this matter. The Court will screen Plaintiff's FAC in
3 due course.

4 Accordingly, it is hereby **ORDERED**:

- 5 1. The February 8, 2024 Order to Show Cause, (Doc. No. 7), is DISCHARGED.
- 6 2. The Clerk of Court is directed to accept the proposed first amended complaint attached to
7 Plaintiff's response to the Order to Show Cause (Doc. No. 8 at 2-4) and shall docket it as
8 Plaintiff's "First Amended Complaint."
- 9 3. The Court deems the First Amended Complaint the operative complaint in this matter and
10 will screen it in due course.

11
12 Dated: March 5, 2024


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE